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Attorneys for Plaintiff

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2009 JUN 25 AM 11:42

CLERK US DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA

BY YCH DEPUTY

**UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA**

<p>Ivan Martin</p> <p>Plaintiff,</p> <p>v.</p> <p>NCO Financial Systems, Inc.</p> <p>Defendant.</p>	<p>Case Number: 09CV1372 WQH AJB</p> <p>Complaint For Damages</p> <p>Jury Trial Demanded</p>
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INTRODUCTION

- The United States Congress has found abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors, and has determined that abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy. Congress wrote the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. (hereinafter "FDCPA"), to eliminate abusive debt collection practices by debt collectors,

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1 to insure that those debt collectors who refrain from using abusive debt
2 collection practices are not competitively disadvantaged, and to promote
3 consistent State action to protect consumers against debt collection abuses.

- 4 2. The California legislature has determined that the banking and credit system
5 and grantors of credit to consumers are dependent upon the collection of just
6 and owing debts and that unfair or deceptive collection practices undermine
7 the public confidence that is essential to the continued functioning of the
8 banking and credit system and sound extensions of credit to consumers. The
9 Legislature has further determined that there is a need to ensure that debt
10 collectors exercise this responsibility with fairness, honesty and due regard
11 for the debtor's rights and that debt collectors must be prohibited from
12 engaging in unfair or deceptive acts or practices.

- 13 3. Paul Plaintiff, (Plaintiff), through Plaintiff's attorneys, brings this action to
14 challenge the actions of NCO Financial Systems, Inc., ("Defendant"), with
15 regard to attempts by Defendant to unlawfully and abusively collect a debt
16 allegedly owed by Plaintiff, and this conduct caused Plaintiff damages.

- 17 4. Plaintiff makes these allegations on information and belief, with the exception
18 of those allegations that pertain to a plaintiff, or to a plaintiff's counsel, which
19 Plaintiff alleges on personal knowledge.

- 20 5. Unless otherwise stated, Plaintiff alleges that any violations by Defendant
21 were knowing and intentional, and that Defendant did not maintain
22 procedures reasonably adapted to avoid any such violation.

23 JURISDICTION AND VENUE

- 24 6. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331, 15 U.S.C. §
25 1692(k), and 28 U.S.C. § 1367 for supplemental state claims.
- 26 7. This action arises out of Defendant's violations of the Fair Debt Collection
27 Practices Act, 15 U.S.C. §§ 1692 et seq. ("FDCPA") and the Rosenthal Fair
28

1 Debt Collection Practices Act, California Civil Code §§ 1788-1788.32
2 ("RFDCPA").

3 8. Because Defendant does business within the State of California, personal
4 jurisdiction is established.

5 9. Venue is proper pursuant to 28 U.S.C. § 1391.

6 **PARTIES**

7 10. Plaintiff is a natural person who resides in the City of San Diego, County of
8 San Diego, State of California.

9 11. Defendant is located in the City of Horsham, the State of Pennsylvania.

10 12. Plaintiff is obligated or allegedly obligated to pay a debt, and is a "consumer"
11 as that term is defined by 15 U.S.C. § 1692a(3).

12 13. Defendant is a person who uses an instrumentality of interstate commerce or
13 the mails in a business the principal purpose of which is the collection of
14 debts, or who regularly collects or attempts to collect, directly or indirectly,
15 debts owed or due or asserted to be owed or due another and is therefore a
16 debt collector as that phrase is defined by 15 U.S.C. § 1692a(6).

17 14. Plaintiff is a natural person from whom a debt collector sought to collect a
18 consumer debt which was due and owing or alleged to be due and owing from
19 Plaintiff, and is a "debtor" as that term is defined by California Civil Code §
20 1788.2(h).

21 15. Defendant, in the ordinary course of business, regularly, on behalf of himself,
22 herself, or others, engages in debt collection as that term is defined by
23 California Civil Code § 1788.2(b), is therefore a debt collector as that term is
24 defined by California Civil Code § 1788.2(c).

25 16. This case involves money, property or their equivalent, due or owing or
26 alleged to be due or owing from a natural person by reason of a consumer
27 credit transaction. As such, this action arises out of a consumer debt and
28 "consumer credit" as those terms are defined by Cal. Civ. Code § 1788.2(f).

FACTUAL ALLEGATIONS

17. At all times relevant to this matter, Plaintiff was an individual residing within the State of California.
18. At all times relevant, Defendant conducted business within the State of California.
19. Sometime before April 16, 2009, Plaintiff is alleged to have incurred certain financial obligations.
20. These financial obligations were primarily for personal, family or household purposes and are therefore a "debt" as that term is defined by 15 U.S.C. §1692a(5).
21. These alleged obligations were money, property, or their equivalent, which is due or owing, or alleged to be due or owing, from a natural person to another person and are therefore a "debt" as that term is defined by California Civil Code §1788.2(d), and a "consumer debt" as that term is defined by California Civil Code §1788.2(f).
22. Sometime thereafter, but before April 16, 2009, Plaintiff allegedly fell behind in the payments allegedly owed on the alleged debt. Plaintiff currently takes no position as to the validity of this alleged debt.
23. Subsequently, but before April 16, 2009, the alleged debt was assigned, placed, or otherwise transferred, to Defendant for collection.
24. Sometime before, April 16, 2009, Defendant telephoned Plaintiff and demanded payment of the alleged debt.
25. This communication to Plaintiff was a "communication" as that term is defined by 15 U.S.C. § 1692a(2), and an "initial communication" consistent with 15 U.S.C. § 1692g(a).
26. This communication was a "debt collection" as Cal. Civ. Code 1788.2(b) defines that phrase, and an "initial communication" consistent with Cal. Civ. Code § 1812.700(b).

1 27. Subsequently, but within the thirty-day period described in 15 U.S.C. §
2 1692(a), Plaintiff notified Defendant in writing via certified mail, that this
3 alleged debt, or some portion of it, was disputed.

4 28. Defendant subsequently received this writing on May 5, 2009 because
5 Defendant signed the certified mail receipt dated May 5, 2009.

6 29. Defendant continued to attempt to contact Plaintiff by telephone on many
7 occasions. Defendant called Plaintiff several times a day from the time
8 Plaintiff sent the dispute letter to the time this complaint was drafted.

9 30. Defendant also mailed Plaintiff a letter on dated May 14, 2009, after already
10 receiving Plaintiffs letter disputing the alleged debt.

11 31. Defendants has never verified the debt.

12 32. Through this conduct, Defendants continued their efforts to collect on the
13 alleged debt, after Plaintiff effectively disputed the alleged debt, without
14 verifying the alleged debt. Consequently, Defendant violated 15 U.S.C. §
15 1692g(b), and Cal. Civ. Code § 1788.17.

16 33. Through this conduct, Defendant used an unfair or unconscionable means to
17 collect or attempt to collect any debt. Consequently, Defendant violated 15
18 U.S.C. § 1692f, and Cal. Civ. Code § 1788.17.

19 34. Through this conduct, Defendant used a false, deceptive, or misleading
20 representation or means in connection with the collection of a debt.
21 Consequently, Defendant violated 15 U.S.C. § 1692e, 15 U.S.C. § 1692e(10),
22 and Cal. Civ. Code § 1788.17.

23 35. Because this violated certain portions of the federal Fair Debt Collection
24 Practices Act as these portions are incorporated by reference in the Rosenthal
25 Fair Debt Collection Practices Act, through California Civil Code § 1788.17,
26 this conduct or omission violated Cal. Civ. Code § 1788.17.

27 36. Subsequently, on or around, May 20, 2009, Plaintiff sent a second letter by
28 United States Certified Mail, to Defendants, demanding in writing, that

1 Defendant cease and desist all communication with Plaintiff. Defendants
2 received this letter, evidence by the signature on the certified mail receipt, on
3 May 26, 2009.

4 37. After Defendant received Plaintiffs written demand to cease all
5 communications, Defendant continued to attempt to collect the alleged debt
6 by contacting Plaintiff by telephone on many occasions.

7 38. Defendant failed to cease further communication with the consumer. Instead,
8 Defendant continued its communications with respect to such debt, for a
9 purpose other than enumerated in 15 U.S.C. § 1692c(c). Consequently,
10 Defendant violated 15 U.S.C. § 1692c(c), and Cal. Civ. Code § 1788.17.

11 39. Because this violated certain portions of the federal Fair Debt Collection
12 Practices Act as these portions are incorporated by reference in the Rosenthal
13 Fair Debt Collection Practices Act, through California Civil Code § 1788.17,
14 this conduct or omission violated Cal. Civ. Code § 1788.17.

15 CAUSES OF ACTION

16 COUNT I

17 VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT

18 15 U.S.C. §§ 1692 ET SEQ.

19 40. Plaintiff incorporates by reference all of the above paragraphs of this
20 Complaint as though fully stated herein.

21 41. The foregoing acts and omissions constitute numerous and multiple violations
22 of the FDCPA, including but not limited to each and every one of the above-
23 cited provisions of the FDCPA, 15 U.S.C. § 1692 et seq.

24 42. As a result of each and every violation of the FDCPA, Plaintiff is entitled to
25 any actual damages pursuant to 15 U.S.C. § 1692k(a)(1); statutory damages in
26 an amount up to \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A); and,
27 reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3) from
28 Defendant.

COUNT II**VIOLATIONS OF THE ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT****CAL. CIV. CODE §§ 1788-1788.32**

43. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.
44. The foregoing acts and omissions constitute numerous and multiple violations of the RFDCPA.
45. As a result of each and every violation of the RFDCPA, Plaintiff is entitled to any actual damages pursuant to Cal. Civ. Code § 1788.30(a); statutory damages for a knowing or willful violation in the amount up to \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b); and reasonable attorney's fees and costs pursuant to Cal. Civ. Code § 1788.30(c) from Defendant.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered against Defendant, and Plaintiff be awarded damages from Defendant, as follows:

COUNT I**FAIR DEBT COLLECTION PRACTICES ACT****15 U.S.C. §§ 1692 ET SEQ.**

46. An award of actual damages pursuant to 15 U.S.C. § 1692k(a)(1);
47. An award of statutory damages of \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A);
48. An award of costs of litigation and reasonable attorney's fees, pursuant to 15 U.S.C. § 1692k(a)(3).

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COUNT II

ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT

CAL. CIV. CODE §§ 1788-1788.32

49. An award of actual damages pursuant to California Civil Code § 1788.30(a);
50. An award of statutory damages of \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b);
51. An award of costs of litigation and reasonable attorney's fees, pursuant to Cal. Civ. Code § 1788.30(c).

TRIAL BY JURY

52. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Date: 6/23/09

Hyde & Swigart

By: 

Joshua B. Swigart
Attorneys for Plaintiff

HYDE & SWIGART
San Diego, California

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Ivan Martin

DEFENDANTS

NCO Financial Systems, Inc.

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(b) County of Residence of First Listed Plaintiff San Diego

(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant

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Horsham

(IN U.S. PLAINTIFF CASES ONLY) DISTRICT COURT

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Hyde & Swigart

411 Camino Del Rio South Suite 301, San Diego, CA 92108

619.233.7770

Attorneys (If Known)

BY: KST DEPUTY

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
			IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

15 U.S.C. § 1692 et seq.

Brief description of cause:

FDCPA

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

75,000

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

6/24/09

FOR OFFICE USE ONLY

RECEIPT #

002735

AMOUNT

\$ 350.00

APPLYING IFP

JUDGE

MAILED

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Court Name: USDC California Southern
Division: 3
Receipt Number: CAS002335
Cashier ID: msweeney
Transaction Date: 06/25/2009
Payer Name: HYDE AND SWIGART ATTY AT LAW

CIVIL FILING FEE
For: MARTIN V. NCO FINANCIAL SYSTEM
Case/Party: D-CAS-3-09-CV-001372-001
Amount: \$350.00

CHECK
Check/Money Order Num: 3187
Amt Tendered: \$350.00

Total Due: \$350.00
Total Tendered: \$350.00
Change Amt: \$0.00

There will be a fee of \$45.00
charged for any returned check.